

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	Criminal No. . <u>11-20320-STA</u>
Plaintiff,)	
)	
vs.)	
)	
DAVID RAY DANIELS,)	
)	
Defendant.)	

**UNITED STATES' RESPONSE TO DEFENDANT'S POSITION ON
PRESENTENCE REPORT**

Comes now the United States Attorney for the Western District of Tennessee by and through his duly authorized Assistant, Debra L. Ireland, and files this response to defendant's position regarding the presentence report.

Facts in Dispute

When the contents of a presentence report are disputed, those contents may not be considered at sentencing unless the court either rules on the dispute, or determines that a ruling is not necessary because the matter will not affect sentencing or be considered by the court in imposing sentence. Fed. R. Crim. P. 32(i)(3)(B).

In the instant case, defendant objects to Paragraph 10 of the Presentence Report, which contains a description of the victim's account events that took place on October 25, 2011, when the defendant and K.H., the victim, were alone.

Dispute Resolution Unnecessary

Although the facts in dispute do have an impact on the calculation of the recommended guideline sentence, they are not essential elements of Coercion and Enticement, the offense of conviction. 18 U.S.C. §2422(b). Resolution of the dispute, however, would likely require testimony from K.H., which her family believes may not be in her best interest. For this reason, the government does not intend to present additional evidence at sentencing and asks this Court to find any further action on the disputed facts to be unnecessary.

Custody of Defendant

A defendant who has been found guilty of certain offenses and is awaiting execution of sentence shall be detained, unless the court finds there is a substantial likelihood that a motion for acquittal or new trial will be granted, or an attorney for the government has recommended that no sentence of imprisonment be imposed and the court also finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the community or any person. 18 U.S.C. §3143(a). The particular offenses subject to this provision include crimes of violence and any felony involving a minor victim. 18 U.S.C. §§ 3142(f)(1)(A, C); 3143(a).

Defendant has been convicted of Coercion and Enticement, which is by definition a crime of violence. 18 U.S.C. §3156(a)(4)(C). The mandatory minimum sentence is ten years' incarceration. 18 U.S.C. 2422(b).

The government respectfully asks this Court to remand him to custody following imposition of sentence.

Wherefore premises considered, the United States asks this Court to proceed with sentencing based on the undisputed facts set forth in the presentence report and remand defendant into custody immediately thereafter.

Respectfully submitted,

EDWARD L. STANTON, III
Acting United States Attorney

By: /s/ Debra L. Ireland
Assistant United States Attorney

CERTIFICATE OF SERVICE

I, Debra L. Ireland, Assistant United States Attorney, do hereby certify that a copy of the foregoing Motion was forwarded by electronic means, via the Court's Electronic Filing System, to Jeffrey H. Jones, Esq., Attorney for Defendant, 6540 Stage Road, Bartlett, Tennessee, 38134.

This 13th Day of August, 2012.

/s/ Debra L. Ireland
Assistant United States Attorney